# Exhibit 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

| | | |
|---|---|---|
| Methyl Tertiary Butyl: | | Master File No. 1:00-1898 |
| Ether ("MTBE") | : | MDL NO. 1358 (SAS) |
| Products Liability | : | M21-88 |
| Litigation | : | |

This Document Relates to:
Orange County Water District
v. Unocal Corporation, et al.,
S.D.N.Y. No. 04 Civ. 4968 (SAS)

CONFIDENTIAL
(Per 2004 MDL 1358 Order)

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Monday, December 1, 2008

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Videotaped Deposition of ROY L. HERNDON, R.G., Volume 17, OCWD'S 30(b)(6) DESIGNEE re Focus Plume #3, held in the law offices of Latham & Watkins, 650 Town Center Drive, Suite 2000, Costa Mesa, California, beginning at 9:16 a.m., before Sandra Bunch VanderPol, RPR, RMR, CRR, CSR #3032.

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deps@golkow.com

Q. Okay. Now, each one of them is a monitoring well, each one of the three?

A. Yes.

Q. What, in general, is a monitoring well, as that term is used by OCWD?

A. It's a well that is used by the District to collect water level and water sample information, as well as geological information. It's not used for producing groundwater.

Q. And how would you distinguish between a monitoring well as contrasted to a production well?

A. Primarily the use of the well. The production well would be used typically as a water supply well to pump water and provide it for some use, versus a monitoring well is primarily used for -- or essentially used for data collection. Not that we don't get data from production wells, but it's the production aspect that would separate the two.

Q. So a monitoring well would be the -- strike that.

The water which is produced from a monitoring well would be used to collect data and not for any other purpose?

A. That's correct. It would be produced

to collect a representative sample of that well. It wouldn't be to go water the lawn or some -- you know, some use of the water.

Q. You mention the word "representative sample." What did you mean by that?

A. A sample that is indicative of the conditions of the aquifer that are -- or the formation that it was produced from.

Q. So it would provide information about conditions in the subsurface?

A. Yes.

Q. So water produced from a monitoring well isn't served to consumers or provided to businesses, or anybody like that?

A. Not the water that's removed from the well. The well may be producing or providing data on an aquifer system that itself may be used to provide water for various beneficial uses, but the monitoring well itself is not used to produce water to provide to customers.

Q. And I think you mentioned three different types of information that could be -- you obtained from a monitoring well. I realize we're talking in general terms here. One of them was water level.

# Exhibit 12

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CASE NAME:
DEPONENT: Steve Fitzsimmons, Volume 2
DATE TAKEN: 4/17/09
REPORTER: Lisa Moskowitz, CSR 10816, RPR

column that starts with 2.0 and then down --

Q. Yeah.

A. -- that would be the same column.

Q. And for all of these data, that value is -- the reported result is ND; correct?

A. The reported -- again, and, again, I don't know how long this query is for, but from -- it looks like from January of 2002 all the way up to February of 2009, all reported results up into the WRMS system is non-detect which is below the reportable detection level at that time.

Q. And the next column over, that's a numeric result. What is that?

A. The numeric result is the actual raw data values that generated out of the computer software system and reported up into LIMS.

Q. All right. And comparing the Exhibit 21 to Exhibit 20, the column in Exhibit 21 entitled numeric result, that is -- that is equivalent to the fourth column from the right which you described as raw value on Exhibit 20?

A. Those two columns would represent the same reporting field; so the column of 1.96 down would be the same as numeric result within this Exhibit 21.

Q. And how -- in numeric result that is the raw

data value, why is that included in the LIMS database?

A. That's always -- it's just the way the LIMS does that query. It will always be presented that way when we do -- it's a subreport directly out of the LIMS system.

Q. And for all of the raw values that are on Exhibit 21, they all correspond in the next column to reported results that are reported as non-detect; correct?

A. I'm sorry. Can you repeat the question.

(Record read.)

THE WITNESS: That is correct. I'm sorry.

BY MR. FINSTEN:

Q. So just looking at this numeric results raw value column, Exhibit 21, in each case where owe there's some that are 0.2, 0.1, zero, in each case where it's greater than zero, that result is less than the method detection level for the sample; correct (*** CHECK ***)?

A. Again, the method detection limit, it will be -- it varies where it -- the method detection limit varies. It will be a different value based on each instrument.

Q. But you report one MDL per year per method per analyte, right, even though you're continuously verifying it and testing it, you have one mandatory MDL?

MS. O'REILLY: I'm going to instruct the witness not to of tech answer.

THE WITNESS: I was asked to do the query I generated the query and provided to to my counsel (*** CHECK ***).

MR. FINSTEN: Aside from from your sown did you have any conversations -- let me rephrase.

Aside from your counsel or employee from the Miller action line firm, did you have any conversations with anybody about these data?

THE WITNESS: No, I did not.

Q. Did you form any conclusions from the information from these data?

A. You mean how am I reading the data?

Q. I can't, any conclusions about MTBE detections in Huntington Beach 13 from these data?

A. All of it seems to be below our reportable detection level.

Q. That's an observation. Do you have any conclusions about this?

A. You mean speculation as far as what the data represents?

Q. No, how about your professional opinion as a director of the OCWD lab about generating -- about data that you yourself generated about this well?

MS. O'REILLY: I'm going to object vague and ambiguous. I think the question is vague and ambiguous what type of conclusion you're looking for. Are you asking him if he's he has an opinion Mr. MTBE has been detected in the well?

MR. FINSTEN: No that's not what I asked.

MS. O'REILLY: I think the question is vague and ambiguous.

MR. FINSTEN: That's a nice prompt, Tracy.

MS. O'REILLY: If you think the well or the sampling -- you can answer if you can.

THE WITNESS: Again, the laboratory would review this as a data report showing that HB13/1 seems to be under our reportable detection limit.

Q. From that you concluded there's no MTBE problem with this well?

MS. O'REILLY: Object vague and ambiguous.

THE WITNESS: Again, that would not -- that would be outside of, you know, problem to me would be towards data versus I think your question is kind of geared towards geology would answer it differently.

BY MR. FINSTEN:

Q. Setting geology aside and just considering the samples, if the sample IDs in here that said HB13 said TB for travel blanks, you would not consider this to be

that we would throw out as a concern for the lab.

Q. So you're not concerned about anything below the 50 percent level of your RDL? That would not be trace -- let me withdraw the question.

That's not trace, is it, under your laboratory definition of trace? That does not meet trace?

A. Under 50 percent we would not define it as trace when we're using that trace qualifier.

Q. And there are -- that's not the case with any of these data?

A. Again, everything that's reported out of here is below the report reportable detection limit.

Q. I understand that. I'm talking about the numeric results that are not equal to zero. None of those are -- meet the lab's definition of trace detections?

A. The only one that would -- you know, if you're defining that as trace, the only one that would be flagged under that rule would be, it looks like to be the .17 on January of 2005.

Q. And when the district got this .17 result, did it follow its usually practice of immediately going back to retest the well?

A. Again, when we get say first-time hit, they will go out and resample the well two consecutive times.

This would not be defined as a first-time hit because it's -- there's no -- in the reported result column there's no value.

Q. All right. In fact we do have on this a date sample and date analyzed the next two columns over. We see it was sampled for this .17 detection we're discussing it was sampled on January 18, 2005, and it was analyzed on January 28 and then ten days later after the 28th almost three weeks after the Sam. Detection you went back out and found another sample and that the numeric result was zero; correct?

A. That's correct.

Q. By the way what does the numeric result of zero mean?

A. That's just, again, there's no such thing as zero but that's just the generation of in the value the system did not detect any type of peak to a point where it would try to integrate it.

Q. You're not particularly concerned about detection of .01 either?

A. Again, the lab's view is we would look at those .01, .02 levels as, you know, noise, baseline noise. But under the qualifier that if someone came back to us and said, hey, we want you to look at that .02 value there, we would go back and see if there is truly a peak

Q. How about in general going back to Exhibit 20, have you examined how many travel blank samples in the LIMS database are listed as non-detect in the reported results column but have numeric results greater than zero?

A. Again, the query was just a straight, you know, how many travel blanks have we done, how many, you know, detections that we got.

Q. When you did that analysis leading to the figure of .16 percent MTBE detections in travel blanks, did you -- you didn't try to find out how many travel blanks samples in the database are listed as non-detect but have numeric results greater than zero?

A. No.

Q. So going back to the sample on Exhibit 21, and I think I asked you already it's your procedure when MTBE is first detected in a drinking water well to immediately go back to retest it to confirm whether MTBE is present; correct?

A. That's correct.

Q. The reason do you that? Could you explain.

A. Again, that is initiated by the water quality department. It's not initiated by the laboratory. What they'll see is when the data comes across, if they determine it's affairs-time hit at a site, they will

initiate a resampling of that and it's two consecutive resamples.

Q. Nobody from water quality told you to resample after the January 25, resampling of HB13; right?

A. Again, we don't resample --

Q. I'm sorry inspect nobody told you nobody provide -- water quality didn't go out and resample and provide you with a sample for analysis; correct?

A. Again, you can see the date. 118/and then it seems like almost three weeks later they're out at the site again so I don't know why that would initiate, you know, go out and be there again. It could be on a quarterly or -- so that would be kind of a question for the quart quality department. //*** 1/18 //***.

Q. All right. And the two samples that were taken from this well immediately following have a numeric result of zero; right?

A. That is correct.

Q. And the one after that is 0.1; right?

A. That is correct.

Q. And you don't think that that could be considered a valid genuine detection of MTBE in that well at .01; right?

A. That's speculation on my part. I would not see that within our lab with our current reportable

extent it calls for speculation, lacks foundation.

THE WITNESS: Again, the ruling that we have is that they will go out and get resamples when they get first-time hits. Based on that, I would say none of these additional samples were based on that.

BY MR. FINSTEN:

Q. I want to mark Exhibit 22.

( Exhibit NUMBER was marked for identification.)

BY MR. FINSTEN:

Q. Take a look at it and let me know when you've had a chance to look it over.?

A. Okay.

Q. So Mr. Fitzsimmons, what I've given you marked as Exhibit 22 is a -- it's a table that I've ordered prepared foreign tiled HB13 comparison of LIMS and WRMS, WRM water resource management data, and these are data that we have pulled together from our production of LIMS and WRMS that's been produced to us by the district and the headings across the top are the headings at least the closest headings to the data are from the data fields that were in the LIMS and WRMS database that we matched to the columns. Do you see that?

A. Yes.

Q. All right. Do you see that these are the same

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 03010546-01 | TB | 524 | MTBE | 29-Jan-03 | 1.96 | 2.0 | ug/L | 1 |
| 97120705-01 | TB | 601602 | MTBE | 04-Jan-98 | 1.82 | 1.8 | ug/L | 5 |
| 97010127-01 | TB | 601602 | MTBE | 23-Jan-97 | 1.31 | 1.3 | ug/L | 5 |
| 97010136-01 | TB | 502 | MTBE | 22-Jan-97 | 1.07 | 1.1 | ug/L | 5 |
| 97010112-01 | TB | 601602 | MTBE | 21-Jan-97 | 1.13 | 1.1 | ug/L | 5 |
| 97010129-01 | TB | 601602 | MTBE | 27-Jan-97 | 1.01 | 1.0 | ug/L | 5 |
| 97010121-01 | TB | 601602 | MTBE | 22-Jan-97 | 1 | 1.0 | ug/L | 5 |
| 08090738-01 | TB | 524 | MTBE | 25-Sep-08 | 0.29 | 0.3 | ug/L | 0.2 |
| 08050905-01 | TB | 524 | MTBE | 03-Jun-08 | 0.21 | 0.2 | ug/L | 0.2 |
| 08030038-01 | TB | 524 | MTBE | 14-Mar-08 | 0.2 | 0.2 | ug/L | 0.2 |
| 06050372-01 | TB | 524 | MTBE | 22-May-06 | 0.21 | 0.2 | ug/L | 0.2 |

6,871

11

0.16%

0.07% (5) 524s

Ex. 20
4/17/09
Fitzsimmons